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„Die unilaterale humanitäre Intervention im »zerfallenen Staat« (»failed State«)“

This book examines the legality of unilateral humanitarian intervention in so-called “failed States”. Unilateral humanitarian intervention is the use of armed force by States for the prevention or discontinuation of large-scale human rights violations in another State without authorisation by the Security Council. In the aftermath of the end of the Cold War, there have been spectacular processes of internal dissolution and collapse of States. Although fragmentation of authority and disintegration of State structures are not entirely new issues in international relations, State collapse since the end of the Cold War has been frequent and devastating. Somalia, which has been without a central government since 1990, Liberia and Sierra Leone, troubled by small-scale wars throughout the last decade, Bosnia-Herzegovina in the beginning of its independence, and Afghanistan, before coming under the military control of the Taliban movement, are only the most prominent cases of disintegrated States. Currently, it is again Afghanistan and the Iraq that are threatened by the collapse of public order and political structures.

States that are unable to perform the basic functions of statehood, that is maintenance of public order and government as well as conduct of foreign relations, are now referred to in the international legal discourse as “failed States”. The processes of the collapse of law and order have almost always taken place in the context of anarchic forms of internal conflicts. Due to widespread human rights violations usually taking place in disintegrated statehood, one of the most important questions regarding collapsed States is whether regional organisations or individual States are entitled to intervene to protect human rights in these States when there is no Security Council authorisation.

The discussion on the legality of the NATO action in Kosovo has shown that the concept of unilateral humanitarian intervention remains one of the most important and controversial concepts in current international law. While this book takes into account the legality of unilateral humanitarian intervention in general, it primarily examines whether the use of armed force for the protection of human rights can be specifically justified in the case of “failed States”.

The first part will be a general analysis of the phenomenon of the “failed State”. After describing the international political context of State collapse, the term

“failed State” will be critically examined. The concept of State collapse will then be analysed from a socio-political and legal (analysis in terms of State theory and international law) perspective. In this context, a crucial question to be discussed is whether collapsed States can still be considered States from the perspective of the traditional sociology of the State and international law.

The second part of this book will define the term and the concept of unilateral humanitarian intervention. This will be done by differentiating it from both the intervention of States to protect nationals abroad and the collective humanitarian intervention authorised by the Security Council under Chapter VII of the UN Charter.

The third part, which is the main part of the book, will deal with the legality of unilateral humanitarian intervention in “failed States”. As it involves the use of armed force, the question arises whether the unilateral humanitarian intervention violates the prohibition on the use of force contained in Article 2 (4) of the UN Charter. In order to answer this question, the prohibition on the use of force will be interpreted in accordance with the traditional means of interpretation (grammatical, systematic, teleological, and genetic interpretation) which are recognised by customary international law. It will then be analysed whether the unilateral humanitarian intervention in “failed States” can be justified by international conventions, customary international law or general principles of law recognised by civilised nations (Article 38 of the Statute of the ICJ). With regard to international conventions, it will be examined whether the unilateral use of force in collapsed statehood can be based on the direct or analogous application of Article 51 of the UN Charter. As far as customary international law is concerned, it will first be discussed whether the international community has already accepted the unilateral humanitarian intervention in “failed States” as a specific rule of customary law. Secondly, it will be analysed whether the unilateral use of armed force can be based on the generally accepted customary concept of countermeasures. General principles of law justifying the unilateral intervention in disintegrated States could be presumed/IMPLIED consent, *negotiorum gestio*, assistance in time of need, necessity or forfeiture. The book concludes with a reflection on the question whether the unilateral humanitarian intervention – in case that it should be illegal under current international law – can be excused due to imperative political or moral considerations.